

2011 IL App (1st) 100322 - U
No. 1-10-0322

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re Alunta S.,</i>)	Appeal from the
)	Circuit Court of
Minor-Respondent-Appellant)	Cook County
)	
(The People of the State of Illinois,)	No. 09 JD 1958
)	
Petitioner-Appellee,)	
)	Honorable
v.)	Colleen F. Sheehan,
)	Judge Presiding.
Alunta S.,)	
)	
Minor-Respondent-Appellant).)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

HELD: The trial court erred in failing to issue a summons to a designated respondent listed on a petition for adjudication of wardship. The designated respondent was not present for the adjudication and delinquency hearings, but was present for and spoke at the disposition hearing. The error did not amount to a plain error because the evidence was not closely balanced and it was not so serious that it affected the fairness of minor-respondent's trial or challenged the integrity of the judicial process. Minor-respondent's convictions of armed robbery, aggravated robbery, two counts of attempt aggravated vehicular hijacking and three counts of aggravated battery violated the one-act, one-crime rule and the lesser charge for each of the theories of criminal culpability should be

1-10-0322

vacated.

¶ 1 Minor-respondent Alunta S. appeals his conviction of the following offenses:(1) armed robbery; (2) attempt aggravated vehicular hijacking to a person 60 years of age or over; (3) attempt aggravated vehicular hijacking with use of a knife; (4) aggravated robbery; (5) aggravated battery with a deadly weapon; (6) aggravated battery on a public way; and (7) aggravated battery to a person over the age of 60. Minor-respondent claims that his due process rights were violated because his foster mother failed to receive a summons notifying her of the juvenile proceedings. Minor-respondent contends that he is entitled to a new hearing under a plain error analysis because the evidence presented during the juvenile proceedings was closely balanced and that the error of failing to issue a summons to his foster mother affected the integrity of the judicial process. Minor-respondent further contends that his convictions violated the one-act, one-crime rule. For the reasons that follow, we affirm in part, vacate in part and remand the cause for further proceedings.

¶ 2

BACKGROUND

¶ 3 Minor-respondent was born on February 1, 1994. In May 2009, minor-respondent resided with his foster mother, Barbara Wyatt. Minor-respondent lived with Wyatt since 2004 because his biological parents's rights were terminated. Minor-respondent received services through the Department of Children and Family Services (DCFS) since 1998.

¶ 4 On May 15, 2009, 82 year old Raymond Williams drove to Hoi Toi Chinese Food Shop located at 85th and Stoney Island to pick up an order of Chinese food. When Williams returned to his parked car after picking up his order of Chinese food, respondent asked him for one dollar

1-10-0322

and Williams said no to the request. Williams noticed three other minors walking through an abandoned BP service station. Williams entered his parked car, but had not yet closed the vehicle's driver's side door when two of the minors approached him. One of the minors, who was identified as Robert Conway, put a knife to his shoulder and told Williams that if he resisted he would kill him. As Conway held a knife to Williams' shoulder, Conway reached into the vehicle and removed the keys from the ignition. Another minor reached into Williams' pocket and took \$42 and his cell phone. Conway ordered Williams to exit the vehicle and to sit in the vehicle's back seat. As this was occurring, Williams noticed minor-respondent on the passenger's side of the vehicle, and minor-respondent then entered the vehicle. Williams exited the vehicle, and when he did so, he saw a police vehicle driving toward him on Stoney Island. As the police vehicle approached them, and the minors began to run. The police vehicle followed the minors who ran into an alley. Williams located a spare set of keys and then drove his vehicle into the alley as well. Williams saw that the police had apprehended minor-respondent and another minor. Williams then went to the police station, and positively identified minor-respondent.

¶ 5 On May 18, 2009, the State filed a petition for adjudication of wardship (petition). In the section requesting the name and residence address of the minor's parents, guardian, custodian, or other, Wyatt was listed as minor-respondent's mother and her residence address was listed on the petition. When the trial court inquired into the whereabouts of minor-respondent's parents, it was informed that parental rights were terminated and that there was no contact for both parents.

¶ 6 The petition alleged that minor-respondent committed the offenses of: (1) armed robbery;

1-10-0322

(2) attempt aggravated vehicular hijacking to a person 60 years of age or over; (3) attempt aggravated vehicular hijacking with use of a knife; (4) aggravated robbery; (5) aggravated battery with a deadly weapon; (6) aggravated battery on a public way; and (7) aggravated battery to a person over the age of 60. The arraignment and plea order filed on May 18, 2009, indicated that minor-respondent was present, as well as a caseworker from Aunt Martha's Youth Services. Minor-respondent entered a plea of not guilty. The arraignment also indicated that minor-respondent had no meaningful contact with his mother or father because parental rights were terminated.

¶ 7 Following a bench trial, the trial court on June 15, 2009, found minor-respondent guilty of armed robbery, two counts of attempt vehicular hijacking, aggravated robbery, and three counts of aggravated battery. On June 29, 2009 during the disposition hearing, a case manager from Aunt Martha's Youth Services and Wyatt were present in court. A probation officer indicated that after meeting with minor-respondent and his foster mother, he agreed with the State that minor-respondent should be committed to the Illinois Youth Department of Corrections. Wyatt spoke at this hearing stating that defendant is basically a good kid, but he listens to other kids. The trial court sentenced minor-respondent to eight months in the Illinois Youth Department of Corrections with a bring back in the eighth month. The trial court indicated that minor-respondent would be eligible for probation if he had a good report during the eight months.

¶ 8 On July 17, 2009, defendant filed a motion for reconsideration regarding his sentence. The State filed a response on August 7, 2009, to which defendant filed a reply. The trial court

1-10-0322

denied defendant's motion to reconsider his sentence on November 5, 2009. Defendant timely appealed.

¶ 9

ANALYSIS

¶ 10 On appeal, defendant contends that his due process rights were violated when Wyatt, his guardian, did not receive notice of the juvenile proceedings initiated against him as required by the Juvenile Court Act of 1987 (Act), 705 ILCS 405/5-525(1)(a) (West 2008). Even though defendant did not object in the trial court to the failure of not serving Wyatt with a summons, he claims that this court should nonetheless review the issue under the plain error doctrine because the error resulted in a violation of his due process rights. Defendant contends that the failure to serve a summons on Wyatt affected the fairness of his trial and challenged the integrity of the judicial process. Defendant also contends that without the presence of a parental figure during the juvenile adjudication and delinquency proceedings, the court was unaware that someone would be willing to take responsibility for him. As such, defendant contends that the integrity of the judicial process was compromised by the failure of Wyatt not receiving proper notice of the proceedings as mandated under the Act.

¶ 11 A minor's failure to object at trial or to raise a claim of error at trial results in a forfeiture of the error on appeal unless the minor can demonstrate that the error amounts to a plain error, which then permits review by this court. Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999); *In re M.W.*, 232 Ill. 2d 408, 430-31 (2009). The first step in engaging in a plain error analysis is to determine whether an error occurred, and the error must be "clear and obvious." *In re M.W.*, 232 Ill. 2d at 431. If a "clear and obvious" error exists, the requested relief will be granted if: "(1) 'the

1-10-0322

evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant,’ or (2) if the error is ‘so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.’ ” *Id.* (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)). The burden of persuasion in a plain error analysis falls upon the defendant. *Id.*

¶ 12 To ensure that defendant-minor’s due process rights were not infringed resulting in an unfair juvenile proceeding as he alleges, this court shall engage in a plain error analysis. The Act dictates who should receive the service of a summons in a delinquency proceeding. The Act states in relevant part:

“(a) Upon the commencement of a delinquency prosecution, the clerk of the court shall issue a summons with a copy of the petition attached. The summons shall be directed to the minor’s parent, guardian or legal custodian *and to each person named as a respondent in the petition.*” (Emphasis added.) 705 ILCS 405/5-525 (West 2009).

Here, a scrivener’s error in the petition resulted in Wyatt being named as defendant’s mother. None of the parties claim that Wyatt was defendant’s mother. Even though Wyatt was listed on the wrong line in the petition as defendant’s mother, she was nonetheless identified on the petition and her residence address was also documented on the petition. In the section of the petition requesting identification of the respective parties, separate lines are listed for the minor’s mother, father, guardian, custodian and other. In this same section, the following language is stated: “[t]he minor and persons named in this paragraph are designated respondents.” Although

1-10-0322

Wyatt's relationship to defendant was not properly classified on the petition, her purposeful inclusion on the petition signifies a relationship to defendant. Thus, regardless of how Wyatt's relationship should be classified on the petition, she was named in the petition and was therefore a respondent. As such, under the express and plain language of the statute that requires a summons to be issued "to each person named as a respondent in the petition," the failure to issue a summons to Wyatt was error. Moreover, the error is "clear and obvious" based on the requirements set forth in the Act. Having concluded that an error occurred during the juvenile proceedings, the next step in the plain error analysis is to determine whether the evidence was closely balanced or if the error affected the integrity of the judicial process.

¶ 13 In his initial brief on appeal, defendant claimed that review and relief are warranted under the second prong of a plain error analysis. Defendant did not engage in a first prong analysis. Instead, defendant rejected the State's contention that the evidence was closely balanced in its reply brief. We will continue the plain error analysis by turning to the first prong to determine whether the evidence was closely balanced.

¶ 14 The record reveals the following evidence. Defendant first approached Williams, who was on a public street standing outside of his parked car, to ask for one dollar. After Williams refused to give defendant one dollar, three other minors approached Williams. Defendant was in the presence of these three minors, when one of them brandished a knife and held it to Williams' shoulder, who was 82 years old, and instructed him not to say anything or he would kill him. Defendant was also present when another minor reached into Williams' pocket and removed \$42 and a cell phone. Defendant entered Williams' vehicle from the vehicle's passenger's side door.

1-10-0322

After the minors fled as a police vehicle approached, the police apprehended defendant in a nearby alley. Williams positively identified defendant. This evidence of defendant's guilt was not closely balanced because he was present during the commission of the crimes and was positively identified by Williams. Thus, defendant is not entitled to the requested relief of a new hearing on the basis that the evidence was closely balanced.

¶ 15 Turning to the second prong, we must determine whether the failure to issue a summons to the named designated respondent on the petition amounted to an error that was "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *In re M.W.*, 232 Ill. 2d at 431. Defendant contends that because Wyatt was not present during the juvenile proceedings he had no one he could turn to for loyalty and advice, and who would have had his best interests at heart. Defendant also claims that Wyatt's absence demonstrated to the trial court that there was no one by his side who would be willing to take responsibility for him. Although Wyatt was not present during the adjudication and delinquency hearings, his case manager from Aunt Martha's Youth Service Center was present at both hearings. Defendant was also represented by a public defender throughout the juvenile proceedings. Both of these individuals acted on defendant's best interest and could have provided defendant with advice and guidance if so requested. Accordingly, defendant's interests were adequately represented during the hearings and either of those individuals could have counseled defendant throughout the process. Importantly, at the disposition hearing where defendant was sentenced, Wyatt was present and spoke on defendant's behalf. Wyatt stated that defendant was a good kid, but tends to succumb to peer pressure when

1-10-0322

defendant was outside of the foster home.

¶ 16 Defendant relies upon *In re Marcus W.*, 389 Ill. App. 3d 1113, 1128 (2009) where this court found the absence of a minor's parents during adjudication and delinquency hearings amounted to a plain error because the minor's fundamental due process rights were violated. *In re Marcus W.*, however, is distinguishable because in that case the trial court noted the lack of adult supervision for the minor during the sentencing hearing where defendant minor's parents or guardian were not present. *Id.* at 1128. Unlike in *In Marcus W.*, defendant's foster mother was present at the sentencing hearing, spoke at the hearing and demonstrated by her presence to the trial court that adult supervision for defendant existed. Thus, the gravity of the error evident in *In re Marcus W.* is not present in the case at bar. Although it was error not to serve Wyatt with a summons, the error was not a plain error warranting a new hearing because the evidence was not closely balanced and the error did not affect the fairness of minor-respondent's trial or challenge the integrity of the judicial process.

¶ 17 Minor-respondent also contends on appeal that his conviction for three counts of aggravated battery, two counts of attempt aggravated vehicular hijacking, aggravated robbery and armed robbery violated the one-act, one-crime rule. The one-act, one-crime rule seeks to prohibit an individual from being convicted of more than one offense arising out of the same conduct. *In re Samantha V.*, 234 Ill. 2d 359, 377 (2009). If offenses are found to violate the one-act, one-crime rule, then the defendant "should be sentenced on the most serious offense and the less serious offense should be vacated." *Id.* at 379. If the most serious offense cannot be determined, then the matter should be remanded to the trial court for that determination. *Id.* at 379-80.

1-10-0322

¶ 18 In response, the State concedes that the one-act, one-crime rule was violated. The State agrees that the three counts of aggravated battery were based on the same act of Conway pressing a knife on Williams' shoulder and that two of the counts should be vacated. The State also agrees with defendant that the three counts of aggravated battery are classified as Class 3 felonies, and as such the most serious offense cannot be determined. The parties agree that the cause should be remanded to determine which one of the three counts of aggravated battery was the most serious offense and that the other two offenses should be vacated. The State also concedes that the offense of attempt aggravated vehicular hijacking against a person 60 years of age or older and attempt aggravated vehicular hijacking with use of a knife were both predicated upon the same act of pressing a knife on Williams' shoulder while taking his keys and ordering him to exit the vehicle. The attempt aggravated vehicular hijacking against a person 60 years of age or older is vacated because it carries a minimum sentence of six years and the attempt aggravated vehicular hijacking with the use of a knife stands because it carries a higher minimum sentence of seven years. The State further concedes that the aggravated armed robbery charge should be vacated because that offense entailed the same physical acts as the armed robbery offense of knowingly taking \$42, a cell phone and vehicle keys from Williams while armed with a dangerous weapon and by use of force or threatening the imminent use of force. As such, the State agrees with defendant's request that this court should vacate the lesser finding of aggravated robbery which is a class 1 felony, and armed robbery which is a class X felony should stand. Accordingly, the trial court's finding of aggravated robbery against defendant is vacated, two counts of aggravated vehicular hijacking are vacated and the cause is remanded to the trial court

1-10-0322

to determine which count of the three counts of aggravated battery should stand against defendant and the remaining two counts of aggravated battery should be vacated.

¶ 19 Accordingly, the judgment of the trial court is affirmed in part, vacated in part and the cause is remanded for further proceedings consistent with this order.

¶ 20 Affirmed in part and vacated in part; cause remanded.